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Message Text

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46
ACTION SS-30

INFO OCT-01 ISO-00 SSO-00 NSCE-00 (ISO) W
---------- 001391
O 281700Z MAR 74
FM AMEMBASSY KINGSTON
TO SECSTATE WASHDC IMMEDIATE 4336
INFO AMEMBASSY TUNIS IMMEDIATE

S E C R E T SECTION 1 OF 2 KINGSTON 1099

EXDIS

E.O. 11652: GDS
TAGS: PINT, EMIN, US, JA
SUBJECT: BAUXITE NEGOTIATIONS SITREP #20: TEXT OF
INDUSTRY PAPER

TUNIS FOR AMBASSADOR GERARD

1. WE HAVE RECEIVED A COPY OF THE PAPER PRESENTED BY
THE INDUSTRY TO PAT ROUSSEAU, CHAIRMAN OF THE BAUXITE
COMMISSION, LAST EVENING. GOVERNMENT NEGOTIATORS ARE
NOW EXAMINING THE TEXT AND WILL SCHEDULE A MEETING
WITH THE COMPANIES JOINTLY IN THE NEAR FUTURE, PROBABLY
TOMORROW. EMBASSY COMMENT ON INDUSTRY PAPER BY SEPTEL.
HEREWITH TEXT QUOTE

COMPANIES' JOINT POSITION

THE COMPANIES ARE WILLING TO AMEND THE EXISTING BAUXITE AND
ALUMINA CONTRACTS AND ARRANGEMENTS WITH THE GOVERNMENT, BASED
ON THE PRINCIPLES SET FORTH BELOW, SUBJECT TO THE FOLLOWING
CONDITIONS AND RESERVATIONS:

1. THE COMPPANIES' RESPECTIVE LEGAL POWERS TO CONSENT TO ANY
MUTUALLY AGREEABLE AMENDMENTS OF THE CONTRACTS AND ARRANGEMENTS
ARE DEPENDENT UPON OBTAINING CERTAIN PRIOR APPROVALS FROM THEIR
LENDING INSTITUTIONS, FROM GOVERNMENT AGENCIES WHICH HAVE IN-
SURED THEIR INVESTMENTS IN JAMAICA, AND FROM THEIR BOARDS OF
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DIRECTORS.

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2. ALL THE TERMS AND CONDITIONS OF THE PRESENT CONTRACTS AND ARRANGEMENTS BETWEEN EACH OF THE COMPANIES AND THE GOVERNMENT OF JAMAICA ARE RATIFIED AND CONTINUED FOR THE DURATION OF THEIR TERMS AS VALID AND BINDING IN ALL RESPECTS.

PROPOSED AMENDMENTS

A. TAXATION - BAUXITE AND ALUMINA

1. THE EXISTING RATES AND ARRANGEMENTS FOR PAYMENT OF INCOME TAXES AND ROYALTIES WILL CONTINUE

2. IN ADDITION, A TAX (THE FORM OF WHICH NEEDS REFINEMENT TO AVOID DOUBLE TAXATION PROBLEMS) WILL BE COMPUTED AND PAID QUARTERLY IN THE AMOUNT OF US$2.50 PER LONG DRY TON OF BAXUITE MINED AND EXPORTED OR PROCESSED INTO ALUMINA IN JAMAICA, PROVIDED THAT SUCH ADDITIONAL TAX SHALL BE REDUCED TO THE EXTENT OF ANY AMOUNTS PAID OR PAYABLE IN JAMAICA AS INCOME TAX IN RESPECT OF THE SAME TAX PERIOD. THE AMOUNT OF SUCH ADDITIONAL TAX WILL BE SUBJECT TO ADJUSTMENT UPWARDS OR DOWNWARDS QUARTERLY IN PROPORTION TO THE AVERAGE DAILY VARIATION FROM THE PRESENT U.S. MARKET PRICE FOR PRIMARY ALUMINUM (U.S. $0.29 PER POUND), AS PUBLISHED IN THE U.S. METAL MARKET. THE ADDITIONAL TAX WILL BE PAYABLE ON PRODUCTION FROM 1 APRIL, 1974. THE ADDITIONAL TAX WOULD NOT BE DEDUCTIBL FOR PURPOSES OF COMPUTING JAMAICAN INCOME TAX. (REVERE DOES NOT JOINT IN PARAGRAPH 2 AND WILL SUBMIT A PROPOSAL FOR SEPARATE TREATMENT IN THIS RESPECT. WHILE ANACONDA JOINS IN THIS PROPOSAL,ANACONDA RESERVES THE RIGHT TO PROPOSE A MODIFICATION TO THE GOVERNMENT TO TAKE ACCOUNT OF ANACONDA'S PARTICULAR CIRCUMSTANCES IN JAMAICA.)

3. THE PRESENT PAYMENT ARRANGEMENTS SHOULD BE CONTINUED IN THE INTEREST OF SIMPLICITY. HOWEVER, THE COMPANIES ARE WILLING TO TO DISCUSS A PROCEDURE FOR ADVANCES AGAINST TAXES ACCRUING DURING THE YEAR.

4. THE GOVERNMENT'S PROPOSAL THAT THE MOST-FAVORED COMPANY PROVISION OF THE CONTRACTS BE MADE INAPPLICABLE TO THE GOVERNMENT'S REVENUE PROPOSALS IS NOT ACCEPTABLE. NONDISCRIMINATION IS A

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FUNDAMENTAL PRINCIPLE OF TAXATION IN ALL RULE OF LAW COUNTRIES, AND IS ESSENTIAL TO THE RESPECTIVE COMPETITIVE POSITIONS OF EACH COMPANY.

5. THERE SHOULD BE NO MINIMUM TONNAGE FOR REVENUE PURPOSES. SUCH A MINIMUM WOULD BE INEQUITABLE SINCE FORCE MAJEURE OR ADVERSE MARKET CONDITIONS MAY LIMIT ANY COMPANY'S PRODUCTION.

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6. THE PRESENT ARRANGEMENTS AS TO THE INAPPLICABILITY OF WITH-
HOLDING TAX ARE AUTHORIZED BY GENERAL JAMAICAN LAW AND SHOULD
CONTINUE, SINCE INVESTMENTS WERE MADE AND COSTS WERE CALCULATED
IN RELIANCE ON THESE RULINGS.

7. THE PRESENT DEPLETION ALLOWANCES SHOULD CONTINUE. THESE
ALLOWANCES WERE CALCULATED INTO THE PROJECTED COST JUSTIFICATIONS
OF THE PROJECTS AND WERE RELIED ON WHEN THE INVESTMENTS WERE
MADE.

8. THE ABOVE REVENUE ARRANGEMENTS SHOULD CONTINUE FOR THE DURATION
OF THE AMENDED CONTRACTS. HOWEVER, THE COMPANIES ARE PREPARED
TO DISCUSS A PROCEDURE FOR RESOLVING DISPUTES ABOUT TRANSFER
PRICES USED IN COMPUTING INCOME TAX ALONG THE FOLLOWING
LINES:

THE TRANSFER PRICE FOR A GIVEN REFERENCE DATE WOULD BE
DETERMINED ON THE BASIS OF THE STANDARD SET FORTH IN THE DOUBLE
TAXATION TREATY, I.E., THE PRICE A WILLING BUYER WOULD PAY
IN AN ARM'S LENGTH TRANSACTION FOR SIMILAR QUANTITIES OVER A
SIMILAR PERIOD OF TIME. IF THE JAMAICAN AND U.S. (OR CANADIAN)
GOVERNMENTS HAVE AGREED ON A TRANSFER PRICE AS CONTEMPLATED
BY THE DOUBLE TAXATION TREATY, THIS TRANSFER PRICE WILL GOVERN
AS OF ITS REFERENCE DATE, SUBJECT TO ADJUSTMENT PENDING THE NEXT
AGREEMENT ON THE TRANSFER PRICE UNDER A FORMULA TO BE AGREED.
IF THE TWO GOVERNMENTS DO NOT AGREE, EITHER PARTY TO THE
CONTRACT MAY REFER THE ISSUE TO ICSID FOR BINDING ARBITRATION
NOT MORE FREQUENTLY THAN ONCE EVERY FIVE YEARS.
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ACTION SS-30

INFO OCT-01 ISO-00 SSO-00 NSCE-00 (ISO) W
---------- 001393
O 281730Z MAR 74
FM AMEMBASSY KINGSTON
TO SECSTATE WASHDC IMMEDIATE 4337
INFO AMEMBASSY TUNIS

S E C R E T SECTION 2 OF 2 KINGSTON 1099

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EXDIS

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B. FOREIGN EXCHANGE

1. SALES PROCEEDS. THE GOVERNMENT'S PROPOSAL IS NOT ACCEPTABLE. THE COMPANIES MUST RETAIN THEIR CONTRACTUAL RIGHT TO MEET THE SECURITY REQUIREMENTS OF THEIR FOREIGN LENDERS, TO SERVICE THEIR FOREIGN DEBTS, TO PURCHASE ABROAD EQUIPMENT AND SUPPLIES NEEDED FOR THEIR JAMAICAN OPERATIONS, AND OTHERWISE UTILIZE THE FUNDS FLOWING FROM THEIR OPERATIONS IN JAMAICA.

2. DEPRECIATION ALLOWANCES. THE GOVERNMENT'S PROPOSALS ARE NOT ACCEPTABLE FOR THE SAME REASONS.

C. CONTROL OF EXPORTS

THE EXISTING PROVISIONS OF THE CONTRACT AND ARRANGEMENTS SHOULD CONTINUE. ALUMINUM AND ALUMINA PLANTS ARE FINANCED AND BUILT IN RELIANCE ON SECURE SOURCES OF PRIMARY MATERIALS AT STABLE PRICES. THE COMPANIES MADE THEIR INVESTMENTS IN RELIANCE ON THEIR CONTRACTUAL RIGHT TO EXPORT BAUXITE AND ALUMINA TO MEET THEIR OWN NEEDS AND CONTRACTUAL COMMITMENTS TO OTHERS

D. MINING LEASES AND LICENSES

THE PROVISIONS OF THE PRESENT CONTRACTS AND ARRANGEMENTS RELATING TO MINING LEASES AND LICENSES SHOULD REMAIN IN EFFECT.
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THE COMPANIES' INVESTMENTS WERE MADE, AND A LARGE PART OF THE FUNDS INVESTED WERE BORROWED FROM LENDERS, IN RELIANCE ON THE SECURITY OF EACH COMPANY'S ORE RESERVES.

E. OTHER AMENDMENTS PROPOSED BY THE CMPANIES

APART FROM ISSUES RAISED BY THE GOVERNMENT, THE COMPANIES PROPOSE THAT:

1. THE DURATION OF THE BAUXITE ARRANGEMENTS SHOULD BE EXTENDED TO A PERIOD CO-EXTENSIVE WITH THE EXISTING ALUMINA AGREEMENTS.

2. ALL THE AMENDED AGREEMENTS SHOULD PROVIDE (AS MANY NOW DO) FOR BINDING ARBITRATION OF ALL DISPUTES UNDER THE ICSID CONVENTION (SUBJECT IN ALCAN'S CASE TO CANADIAN ADHERENCE TO THAT CONVENTION).

3. PROCEDURES SHOULD BE ESTABLISHED FOR IMPROVING THE ABILITY OF

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THE COMPANIES TO OBTAIN EXPEDITIOUSSLY WEJLK PERMITS FOR EXPATRIATE PERSONNEL, IMPORT LICENSES, AND CUSTOMS DUTY CLEARANCES.

F. ISSUES INAPPROPRIATE FOR JOINT COMPANY POSITION

THE GOVERNMENT'S PROPOSALS AS TO SUCH MATTERS AS SALES OF SURFACE RIGHTS, EXPANSION OF ALUMINA OPERATIONS AND LOCAL EQUITY PARTICIPATION ARE NOT APPROPRIATE SUBJECTS FOR JOINT NEGOTIATIONS, AND MAY BE RESPONDED TO SEPARATELY BY EACH COMPANY, ALONG WITH SUCH OTHER PROPOSALS FOR AMENDMENT AS EACH COMPPANY MAY DESIRE TO MAKE. (SOME SUCH PROPOSALS, IF MADE, MAY BE ENDORSED BY OTHER COMPPANIES AND BECOME SUITABLE FOR A JOINT COMPANY POSITION). UNQUOTE.
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